

discloses return information reflected on returns pursuant to the provisions of paragraph (b) of this section shall disclose such information to any person, other than the taxpayer to whom such return information reflected on returns relates or other officers or employees of the Department of Agriculture whose duties or responsibilities require such disclosure for a purpose described in paragraph (b) of this section, except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(ii) If the Internal Revenue Service determines that the Department of Agriculture, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Internal Revenue Code or regulations or published procedures thereunder, the Internal Revenue Service may take such actions as are deemed necessary to ensure that such requirements are or shall be satisfied, including suspension of disclosures of return information reflected on returns otherwise authorized by section 6103(j)(5) and paragraph (b) of this section, until the Internal Revenue Service determines that such requirements have been or will be satisfied.

(d) *Effective date.* This section is applicable on June 6, 2003.

[T.D. 9060, 68 FR 33857, June 6, 2003]

**§ 301.6103(k)(6)–1T Disclosure of return information by certain officers and employees for investigative purposes (temporary).**

(a) *General rule.* (1) Pursuant to the provisions of section 6103(k)(6) and subject to the conditions of this section, an internal revenue employee or an Office of Treasury Inspector General for Tax Administration (TIGTA) employee, in connection with official duties relating to any examination, administrative appeal, collection activity, administrative, civil or criminal investigation, enforcement activity, ruling, negotiated agreement, prefiling activity, or other proceeding or offense under the internal revenue laws or related statutes, or in preparation for any proceeding described in section 6103(h)(2) (or investigation which may result in such a proceeding), may dis-

close return information, of any taxpayer, to the extent necessary to obtain information relating to such official duties or to accomplish properly any activity connected with such official duties, including, but not limited to—

(i) Establishing or verifying the correctness or completeness of any return or return information;

(ii) Determining the responsibility for filing a return, for making a return if none has been made, or for performing such acts as may be required by law concerning such matters;

(iii) Establishing or verifying the liability (or possible liability) of any person, or the liability (or possible liability) at law or in equity of any transferee or fiduciary of any person, for any tax, penalty, interest, fine, forfeiture, or other imposition or offense under the internal revenue laws or related statutes or the amount thereof for collection;

(iv) Establishing or verifying misconduct (or possible misconduct) or other activity proscribed by the internal revenue laws or related statutes;

(v) Obtaining the services of persons having special knowledge or technical skills (such as, but not limited to, knowledge of particular facts and circumstances relevant to a correct determination of a liability described in paragraph (a)(1)(iii) of this section or skills relating to handwriting analysis, photographic development, sound recording enhancement, or voice identification) or having recognized expertise in matters involving the valuation of property if relevant to proper performance of official duties described in this paragraph;

(vi) Establishing or verifying the financial status or condition and location of the taxpayer against whom collection activity is or may be directed, to locate assets in which the taxpayer has an interest, to ascertain the amount of any liability described in paragraph (a)(1)(iii) of this section for collection, or otherwise to apply the provisions of the Internal Revenue Code relating to establishment of liens against such assets, or levy, seizure, or sale on or of the assets to satisfy any such liability;

(vii) Preparing for any proceeding described in section 6103(h)(2) or conducting an investigation which may result in such a proceeding; or

(viii) Obtaining, verifying, or establishing information concerned with making determinations regarding a taxpayer's liability under the Internal Revenue Code, including, but not limited to, the administrative appeals process and any ruling, negotiated agreement, or prefiling process.

(2) Disclosure of return information for the purpose of obtaining information to carry out properly the official duties described by this paragraph, or any activity connected with the official duties, is authorized only if the internal revenue or TIGTA employee reasonably believes, under the facts and circumstances, at the time of a disclosure, the information is not otherwise reasonably available, or if the activity connected with the official duties cannot occur properly without the disclosure.

(3) Internal revenue and TIGTA employees may identify themselves, their organizational affiliation with the Internal Revenue Service (IRS) (e.g., Criminal Investigation (CI)) or TIGTA (e.g., Office of Investigations (OI)), and the nature of their investigation, when making an oral, written, or electronic contact with a third party witness through the use and presentation of any identification media (including, but not limited to, an IRS or TIGTA badge, credential, or business card) or through the use of an information document request, summons, or correspondence on IRS or TIGTA letterhead or which bears a return address or signature block that reveals affiliation with the IRS or TIGTA.

(4) This section does not address or affect the requirements under section 7602(c) (relating to contact of third parties).

(b) *Disclosure of return information in connection with certain personnel or claimant representative matters.* In connection with official duties relating to any investigation concerned with enforcement of any provision of the Internal Revenue Code, including enforcement of any rule, or directive prescribed by the Secretary or the Commissioner of Internal Revenue under

any provision of the Internal Revenue Code, or the enforcement of any provision related to tax administration under the jurisdiction of the IRS or TIGTA, that affects or may affect the personnel or employment rights or status, or civil or criminal liability, of any former, current, or prospective employee of the Treasury Department or the rights of any person who is, or may be, a party to an administrative action or proceeding pursuant to 31 U.S.C. 330 (relating to practice before the Treasury Department), an internal revenue or TIGTA employee is authorized to disclose return information for the purpose of obtaining, verifying, or establishing other information which is or may be relevant and material to the investigation.

(c) *Definitions.* The following definitions apply to this section—

(1) *Disclosure of return information to the extent necessary* means a disclosure of return information which an internal revenue or TIGTA employee, based on the facts and circumstances, at the time of the disclosure, reasonably believes is necessary to obtain information to perform properly the official duties described by this section, or to accomplish properly the activities connected with carrying out those official duties. The term necessary in this context does not mean essential or indispensable, but rather appropriate and helpful in obtaining the information sought. Nor does necessary in this context refer to the necessity of conducting an investigation or the appropriateness of the means or methods chosen to conduct the investigation. Section 6103(k)(6) does not limit or prescribe IRS or TIGTA officers and employees with respect to the decision to initiate or how to conduct an investigation. Disclosures under this subparagraph, however, may not be made indiscriminately or solely for the benefit of the recipient or as part of a negotiated quid pro quo arrangement. This paragraph (c)(1) is illustrated by the following examples:

*Example 1.* A revenue agent contacts a taxpayer's customer regarding the customer's purchases made from the taxpayer during the year under investigation. The revenue

agent is able to obtain the purchase information only by disclosing the taxpayer's identity and the fact of the investigation. Depending on the facts and circumstances known to the revenue agent at the time of the disclosure, such as the way the customer maintains his records, it also may be necessary for the revenue agent to inform the customer of the date of the purchases and the types of merchandise involved for the customer to find the purchase information.

*Example 2.* A revenue agent contacts a third party witness to obtain copies of invoices of sales made to a taxpayer under examination. The third party witness provides copies of the sales invoices in question and then asks the revenue agent for the current address of the taxpayer because the taxpayer still owes money to the third party witness. The revenue agent may not disclose that current address because this disclosure would be only for the benefit of the third party witness and not necessary to obtain information for the examination.

*Example 3.* A revenue agent contacts a third party witness to obtain copies of invoices of sales made to a taxpayer under examination. The third party witness agrees to provide copies of the sales invoices in question only if the revenue agent provides him with the current address of the taxpayer because the taxpayer still owes money to the third party witness. The revenue agent may not disclose that current address because this disclosure would be a negotiated quid pro quo arrangement.

(2) *Disclosure of return information to accomplish properly an activity connected with official duties* means a disclosure of return information to carry out a function associated with official duties generally consistent with established practices and procedures. This paragraph (c)(2) is illustrated by the following example:

*Example.* A taxpayer failed to file an income tax return and pay the taxes owed. After the taxes were assessed and the taxpayer was notified of the deficiencies, a revenue officer filed a notice of federal tax lien and then served a notice of levy on the taxpayer's bank. The notices of lien and levy contained the taxpayer's name, social security number, amount of outstanding liability, and the tax period and type of tax involved. The taxpayer's assets were levied to satisfy the tax debt, but it was determined that, prior to the levy, the revenue officer failed to issue the taxpayer a notice of right to hearing before the levy, as required by section 6330. The disclosure of the taxpayer's return information in the notice of levy is authorized by section 6103(k)(6) despite the revenue officer's failure to issue the notice

of right to hearing. The ultimate validity of the underlying levy is irrelevant to the issue of whether the disclosure was authorized by section 6103(k)(6).

(3) *Information not otherwise reasonably available* means information that an internal revenue or TIGTA employee reasonably believes, under the facts and circumstances, at the time of a disclosure, cannot be obtained in a sufficiently accurate or probative form, or in a timely manner, and without impairing the proper performance of the official duties described by this section, without making the disclosure. This definition does not require or create the presumption or expectation that an internal revenue or TIGTA employee must seek information from a taxpayer or authorized representative prior to contacting a third party witness in an investigation. Moreover, an internal revenue or TIGTA employee may make a disclosure to a third party witness to corroborate information provided by a taxpayer. This paragraph (c)(3) is illustrated by the following examples:

*Example 1.* A revenue agent is conducting an examination of a taxpayer. The taxpayer refuses to cooperate or provide any information to the revenue agent. Information relating to the taxpayer's examination would be information not otherwise reasonably available because of the taxpayer's refusal to cooperate and supply any information to the revenue agent. Therefore, the revenue agent may seek information from a third party witness. Neither the Internal Revenue Code, IRS procedures, nor these regulations require repeated contacting of an uncooperative taxpayer.

*Example 2.* A special agent is conducting a criminal investigation of a taxpayer. The special agent has acquired certain information from the taxpayer. Although the special agent has no specific reason to disbelieve the taxpayer's information, the special agent contacts several third party witnesses to confirm the information. The special agent may contact third party witnesses to verify the correctness of the information provided by the taxpayer because the IRS is not required to rely solely on information provided by a taxpayer, and a special agent may take appropriate steps, including disclosures to third party witnesses under section 6103(k)(6), to verify independently or corroborate information obtained from a taxpayer.

(4) *Internal revenue employee* means, for purposes of this section, an officer

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or employee of the IRS or Office of Chief Counsel for the IRS.

(5) *TIGTA employee* means an officer or employee of the Office of Treasury Inspector General for Tax Administration.

(d) *Examples.* The following examples illustrate the application of this section:

*Example 1.* A revenue agent is conducting an examination of a taxpayer. The taxpayer has been very cooperative and has supplied copies of invoices as requested. Some of the taxpayer's invoices show purchases that seem excessive in comparison to the size of the taxpayer's business. The revenue agent contacts the taxpayer's suppliers for the purpose of corroborating the invoices the taxpayer provided. In contacting the suppliers, the revenue agent discloses the taxpayer's name, the dates of purchase, and the type of merchandise at issue. These disclosures are permissible under section 6103(k)(6) because, under the facts and circumstances known to the revenue agent at the time of the disclosures, the disclosures were necessary to obtain information (corroboration of invoices) not otherwise reasonably available because suppliers would be the only source available for corroboration of this information.

*Example 2.* A revenue agent is conducting an examination of a taxpayer. The revenue agent asks the taxpayer for business records to document the deduction of the cost of goods sold shown on Schedule C of the taxpayer's return. The taxpayer will not provide the business records to the revenue agent, who contacts a third party witness for verification of the amount on the Schedule C. In the course of the contact, the revenue agent shows the Schedule C to the third party witness. This disclosure is not authorized under section 6103(k)(6). Section 6103(k)(6) permits disclosure only of return information, not the return (including schedules and attachments) itself. If necessary, a revenue agent may disclose return information extracted from a return when questioning a third party witness. Thus, the revenue agent could have extracted the amount of cost of goods sold from the Schedule C and disclosed that amount to the third party witness.

*Example 3.* A special agent is conducting a criminal investigation of a taxpayer, a doctor, for tax evasion. Notwithstanding the records provided by the taxpayer and the taxpayer's bank, the special agent decided to obtain information from the taxpayer's patients to verify amounts paid to the taxpayer for his services. Accordingly, the special agent sent letters to the taxpayer's patients to verify these amounts. In the letters, the agent disclosed that he was a special agent with IRS-CI and that he was con-

ducting a criminal investigation of the taxpayer. Section 6103(k)(6) permits these disclosures to confirm the taxpayer's income. The decision of whether to verify information already obtained is a matter of investigative judgment and is not limited by section 6103(k)(6).

*Example 4.* Corporation A requests a private letter ruling (PLR) as to the taxability of a merger with Corporation B. Corporation A has submitted insufficient information about Corporation B to consider properly the tax consequences of the proposed merger. Accordingly, information is needed from Corporation B. Under section 6103(k)(6), the IRS may disclose Corporation A's return information to Corporation B to the extent necessary to obtain information from Corporation B for the purpose of properly considering the tax consequences of the proposed merger that is the subject of the PLR.

(e) *Effective date.* This section is applicable on July 10, 2003.

[T.D. 9073, 68 FR 41075, July 10, 2003; T.D. 9073, 68 FR 55436, Sept. 26, 2003]

### **§ 301.6103(k)(9)-1 Disclosure of returns and return information relating to payment of tax by credit card and debit card.**

Officers and employees of the Internal Revenue Service may disclose to card issuers, financial institutions, or other persons such return information as the Commissioner deems necessary in connection with processing credit card and debit card transactions to effectuate payment of tax as authorized by § 301.6311-2. Officers and employees of the Internal Revenue Service may disclose such return information to such persons as the Commissioner deems necessary in connection with billing or collection of the amounts charged or debited, including resolution of errors relating to the credit card or debit card account as described in § 301.6311-2(d).

[T.D. 8969, 66 FR 64742, Dec. 14, 2001]

### **§ 301.6103(l)-1 Disclosure of returns and return information for purposes other than tax administration.**

(a) *Definition.* For purposes of applying the provisions of section 6103(l) of the Internal Revenue Code, the term *agent* includes a contractor.